

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS W. DiPIETRO, a minor, by and	:	CIVIL ACTION
through EDWARD D. DiPIETRO and KATHLEEN:	:	
DiPIETRO, his parents and natural guardians, and	:	
EDWARD D. DiPIETRO and KATHLEEN	:	
DiPIETRO in their own right	:	NO. 13-1091
	:	
v.	:	
	:	
POOLMASTER, INC.	:	

NICHOLAS W. DiPIETRO, a minor, by and	:	COURT OF COMMON PLEAS
through EDWARD D. DiPIETRO and KATHLEEN:	:	OF PHILADELPHIA COUNTY, PA
DiPIETRO, his parents and natural guardians, and	:	
EDWARD D. DiPIETRO and KATHLEEN	:	JANUARY TERM, 2013
DiPIETRO in their own right	:	
	:	NO. 3746
	:	
v.	:	
	:	
POOLMASTER, INC.	:	

AMENDED NOTICE OF REMOVAL

TO THE CLERK OF COURT:

Kindly file the attached Amended Petition of defendant, Poolmaster, Inc. for Removal to the United States District Court for the Eastern District of Pennsylvania of record in the above-referenced matter.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: 

BRADLEY D. REMICK, ESQ.

Attorney ID #49449

Attorney for defendant

2000 Market Street

Philadelphia, PA 19103

Phone: 215-575-2762

Fax: 215-575-0856

E-Mail: bremick@mdwcg.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS W. DiPIETRO, a minor, by and : CIVIL ACTION
through EDWARD D. DiPIETRO and KATHLEEN:
DiPIETRO, his parents and natural guardians, and :
EDWARD D. DiPIETRO and KATHLEEN :
DiPIETRO in their own right : NO. 13-1091
:
v. :
:
POOLMASTER, INC. :

NICHOLAS W. DiPIETRO, a minor, by and : COURT OF COMMON PLEAS
through EDWARD D. DiPIETRO and KATHLEEN: OF PHILADELPHIA COUNTY, PA
DiPIETRO, his parents and natural guardians, and :
EDWARD D. DiPIETRO and KATHLEEN : JANUARY TERM, 2013
DiPIETRO in their own right :
:
v. : NO. 3746
:
POOLMASTER, INC. :

AMENDED NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

This Amended Notice of Removal by the defendant, Poolmaster, Inc. (hereinafter "defendant") through its counsel, Marshall, Dennehey, Warner, Coleman & Goggin, in accordance with the provisions of 28 U.S.C. §1446, respectfully states:

1. Defendant desires to exercise its right under 28 U.S.C. §1441, et seq. to remove this action from the Court of Common Pleas of Philadelphia County, in which said case is now pending under the name and caption, *Nicholas W. DiPietro, a minor, by and through Edward D. DiPietro and Kathleen DiPietro, his parents and natural guardians, and Edward D. DiPietro*

and Kathleen DiPietro in their own right v. Poolmaster, Inc., Court of Common Pleas of Philadelphia County, January Term, 2013; No.3746.

2. On or about January 31, 2013, plaintiffs filed a Civil Action Complaint against defendant and served said Complaint on January 31, 2013. A copy of the Complaint and letter addressed to defendant are attached hereto and marked Exhibit "A".

3. Plaintiffs are citizens of the United States currently residing at 14 Michelle Circle, Gilbertsville, Pennsylvania 19525.

4. Defendant, Poolmaster, Inc., is a California Corporation with its principal place of business located at 770 Del Paso Road, Sacramento, California 95834.

5. The damages sustained by the plaintiffs may be in excess of \$75,000.00.

6. This action is one in which this Honorable Court has original jurisdiction under the provisions of 28 U.S.C. §1441(a), in that it is a civil action wherein plaintiffs have alleged that the damages in controversy exceed the sum or value of \$50,000.00, exclusive of interest and costs and is between citizens of different states.

7. This notice is filed within thirty (30) days upon defendant's receipt of a copy of the Writ of Summons as prescribed by 28 U.S.C. §1446(a) and (b).


8. Written notice of removal has been given to opposing counsel as required by 28 U.S.C. §1446(d).

9. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this notice will be promptly filed with the Court of Common Pleas of Philadelphia County.

WHEREFORE, defendant, Poolmaster, Inc., prays that the above action now pending against it in the Court of Common Pleas of Philadelphia County be removed to this Court pursuant to 28 U.S.C. §§1441(a),(b) and (c).

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:



BRADLEY D. REMICK, ESQ.

Attorney ID #49449

Attorney for defendant

2000 Market Street

Philadelphia, PA 19103

Phone: 215-575-2762

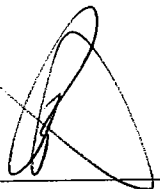
Fax: 215-575-0856

E-Mail: bremick@mdwcg.com

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

AFFIDAVIT

BRADLEY D. REMICK, ESQUIRE, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Amended Notice of Removal are true and correct to the best of his knowledge, information and belief.

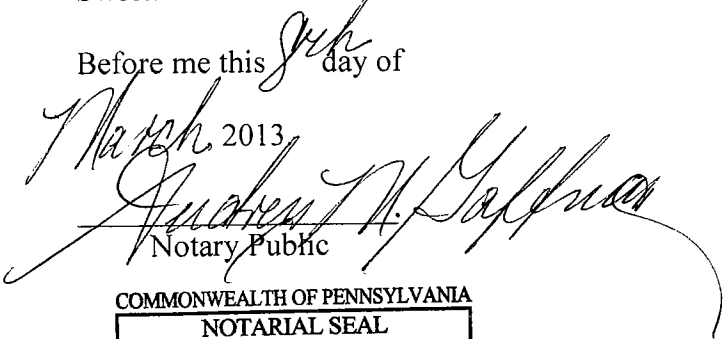


BRADLEY D. REMICK

Sworn to and Subscribed

Before me this *9th* day of

March, 2013



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Audrey M. Gaffney, Notary Public
City of Philadelphia, Philadelphia County
My commission expires July 01, 2014


CERTIFICATION OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of defendant's Amended Petition for Removal in the within matter this date by regular mail.

Justin J. McCarthy, Esquire
The Commons at Lincoln Center
118 John Robert Thomas Drive
Exton, PA 19341
Attorney for Plaintiffs

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:



BRADLEY D. REMICK, ESQ.
Attorney ID #49449
Attorney for defendant
2000 Market Street
Philadelphia, PA 19103
Phone: 215-575-2762
Fax: 215-575-0856
E-Mail: bremick@mdwcg.com

DATE: March 8, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS W. DiPIETRO, a minor, by and	:	CIVIL ACTION
through EDWARD D. DiPIETRO and KATHLEEN:	:	
DiPIETRO, his parents and natural guardians, and	:	
EDWARD D. DiPIETRO and KATHLEEN	:	
DiPIETRO in their own right	:	NO. 13-1091
	:	
v.	:	
	:	
POOLMASTER, INC.	:	

NICHOLAS W. DiPIETRO, a minor, by and	:	COURT OF COMMON PLEAS
through EDWARD D. DiPIETRO and KATHLEEN:	:	OF PHILADELPHIA COUNTY, PA
DiPIETRO, his parents and natural guardians, and	:	
EDWARD D. DiPIETRO and KATHLEEN	:	JANUARY TERM, 2013
DiPIETRO in their own right	:	
	:	NO. 3746
	:	
v.	:	
	:	
POOLMASTER, INC.	:	

**PRAECIPE TO FILE COPY OF AMENDED NOTICE OF REMOVAL FROM STATE
COURT TO U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

TO THE PROTHONOTARY:

Pursuant to 28 U.S.C. § 1446(d), defendant, Poolmaster, Inc., files herewith a copy of the Amended Notice of Removal filed in the United States District for the Eastern District of Pennsylvania on March 8, 2013.

MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN



BRADLEY D. REMICK, ESQUIRE

Attorney for defendant

2000 Market Street

Philadelphia, PA 19103

Phone: (215) 575-2762

Fax: (215) 575-0856

E-Mail: bdremick@mdwgc.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nicholas W. DiPietro, a minor by and through Edward D. DiPietro and Kathleen DiPietro

(b) County of Residence of First Listed Plaintiff Montgomery County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Justin J. McCarthy, Esquire Phone: 610-363-6104
118 John Robert Thomas Drive, Exton, PA 19341

DEFENDANTS

Poolmaster, Inc.

County of Residence of First Listed Defendant Sacramento County, CA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Bradley D. Remick, Esquire Phone: 215-575-2762
2000 Market Street, Philadelphia, PA 19103

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1. U.S. Government Plaintiff
- ☐ 2. U.S. Government Defendant
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 4. Diversity (Indicates Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits. <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 195 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1441
Brief description of cause:
Products liability action involving a toy product.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE _____

DOCKET NUMBER _____

DATE

March 8, 2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff 14 Michelle Circle, Gilbertsville, PA 19525

Address of Defendant 770 Del Paso Road, Sacramento, CA 95834

Place of Accident, Incident or Transaction 1413 Penny Lane, Gilbertsville, PA

(Use Reverse Side for Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 8.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier number case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☒ Products Liability
8. ☐ Products Liability – Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Bradley D. Remick, Esquire, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE March 8, 2013

Bradley D. Remick
Attorney-at-Law

49449
Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE March 8, 2013

Bradley D. Remick
Attorney-at-Law

49449
Attorney I.D. #

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

NICHOLAS W. DIPIETRO, a minor, et al : **CIVIL ACTION**
:
:
v. :
:
POOLMASTER, INC. :
:
: **NO. 13-1091**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus-Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security-Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration-Cases require to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos-Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management-Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management--Cases that do not fall into any one of the other tracks. (X)

<u>March 8, 2013</u>	<u>Bradley D. Remick</u>	<u>Defendant</u>
Date	Attorney-at-law	Attorney for
<u>215-575-2762</u>	<u>215-575-0856</u>	<u>bdremick@mdwccg.com</u>
Telephone	FAX Number	E-Mail Address

EXHIBIT "A"

LAW OFFICES
JUSTIN J. MCCARTHY
THE COMMONS AT LINCOLN CENTER
118 JOHN ROBERT THOMAS DRIVE
EXTON, PENNSYLVANIA 19341
(610) 363-6104

READING
(610) 376-2676

TELEFAX:
(610) 524-6532

January 31, 2013

Certified Mail/Return Receipt Requested

Poolmaster, Inc.
770 Del Paso Road
Sacramento, CA 95834-1117

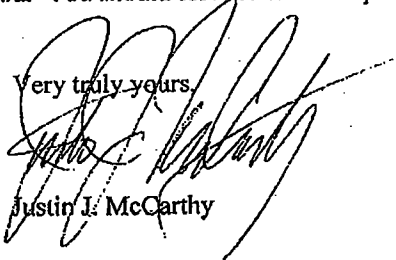
Re: Nicholas W. DiPietro, a minor, by and through
Edward D. DiPietro and Kathleen DiPietro, etc.
vs. Poolmaster, Inc.
Court of Common Pleas of Philadelphia, PA - #1301049377

Dear Sir/Madam:

I enclose herewith a true and correct copy of a Complaint which has been filed against you on January 31, 2013 in the above matter in the Court of Common Pleas of Philadelphia County, PA at No. 1301049377.

You must file a written response to the Complaint within 20 days of service upon you or a judgment may be entered against you. You should forward this Complaint to your attorney immediately.

Very truly yours,



Justin J. McCarthy

JJMcc:mh
Enclosure
cc: Mr. and Mrs. Edward D. DiPietro

Court of Common Pleas of Philadelphia County Trial Division Civil Cover Sheet		For Prothonotary Use Only (Docket Number)	
PLAINTIFF'S NAME NICHOLAS W. DIPIETRO		E-Filed Number: 1301049377	
PLAINTIFF'S ADDRESS 14 MICHELLE CIRCLE GILBERTSVILLE PA 19525		DEFENDANT'S NAME POOLMASTER INC	
PLAINTIFF'S NAME EDWARD D. DIPIETRO		DEFENDANT'S ADDRESS 770 DEL PASO ROAD SACRAMENTO CA 95834	
PLAINTIFF'S ADDRESS 14 MICHELLE CIRCLE GILBERTSVILLE PA 19525		DEFENDANT'S NAME	
PLAINTIFF'S NAME KATHLEEN DIPIETRO		DEFENDANT'S ADDRESS	
PLAINTIFF'S ADDRESS 14 MICHELLE CIRCLE GILBERTSVILLE PA 19525		DEFENDANT'S NAME	
TOTAL NUMBER OF PLAINTIFFS 3		TOTAL NUMBER OF DEFENDANTS 1	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00		COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Other:		<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition <input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival	
CASE TYPE AND CODE 2P - PRODUCT LIABILITY			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)			IS CASE SUBJECT TO COORDINATION ORDER? YES NO
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>NICHOLAS W DIPIETRO , EDWARD D DIPIETRO , KATHLEEN DIPIETRO</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFFS/PETITIONERS/APPELLANTS ATTORNEY JUSTIN J. MCCARTHY		ADDRESS 118 JOHN ROBERT THOMAS DRIVE EXTON PA 19341	
PHONE NUMBER (610) 363-6104	FAX NUMBER (610) 524-6532		
SUPREME COURT IDENTIFICATION NO. 20152		E-MAIL ADDRESS abb-nov@msn.com	
SIGNATURE OF FILING ATTORNEY OR PARTY JUSTIN MCCARTHY		DATE SUBMITTED Thursday, January 31, 2013, 01:45 pm	

PRELIMINARY COPY (For Approval by the Prothonotary Clerk)

Case ID: 130103746

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA

JUSTIN J. MCCARTHY, ESQUIRE
Attorney I.D. No 20152
The Commons at Lincoln Center
118 John Robert Thomas Drive
Exton, PA 19341
610-363-6104

Attorney for Plaintiffs

NICHOLAS W. DIPIETRO, a minor, by and through EDWARD D.
DIPIETRO and KATHLEEN DIPIETRO, his parents and natural
guardians, and EDWARD D. DIPIETRO and KATHLEEN
DIPIETRO in their own right
14 Michelle Circle
Gilbertsville, PA 19525

vs.
POOLMASTER, INC.
770 Del Paso Road
Sacramento, CA 95834-1117,
Defendant

TERM, 2013

: NO. 1301049377

: JURY TRIAL OF TWELVE
PERSONS DEMANDED

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

10-284

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

Asociacion De Licenciados
De Filadelfia
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Attorney for Plaintiffs

NICHOLAS W. DiPIETRO, a minor, by and through EDWARD D. DiPIETRO and KATHLEEN DiPIETRO, his parents and natural guardians, and EDWARD D. DiPIETRO and KATHLEEN DiPIETRO in their own right 14 Michelle Circle Gilbertsville, PA 19525 Plaintiffs	:	IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PA
	:	
	:	TERM, 2013
	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	NO. 1301049377
POOLMASTER, INC. 770 Del Paso Road Sacramento, CA 95834-1117 Defendant	:	
	:	JURY TRIAL OF TWELVE
	:	PERSONS DEMANDED

COMPLAINT

1. Plaintiffs, Edward D. DiPietro and Kathleen DiPietro ("plaintiffs"), are adult individuals, husband and wife, and parents of Nicholas W. DiPietro, who reside at 14 Michelle Circle, Gilbertsville, Montgomery County, Pennsylvania, 19525.
2. Plaintiff, Nicholas W. DiPietro ("minor plaintiff"), is a minor who resides with his parents, plaintiffs, Edward D. DiPietro and Kathleen DiPietro.
3. The minor plaintiff, born on June 11, 2000, was 11 years of age at the time of the incident at issue which is described below.
4. Plaintiffs bring this action in their own right and for and on behalf of the minor plaintiff as his parents and natural guardians.
5. Defendant, Poolmaster, Inc. ("defendant"), is a corporation, incorporated under the laws of the State of California, with a corporate headquarters located at 770 Del Paso Road, Sacramento, Sacramento County, California 95834.

6. At all material times, defendant was acting by and through and its agents, servants and/or employees who were then and there acting within the course and scope of their employment with defendant.

7. Plaintiffs aver on information and belief that defendant, Poolmaster, Inc., is the designer, manufacturer, seller and distributor of a toy product known as Poolmaster Jumbo Hot Shots Power Water Launcher, Model No. 72572 ("Poolmaster Water Launcher").

8. Plaintiffs aver on information and belief that at all material times, defendant was engaged in the design, manufacture, assembly, fabrication, distribution and sale of water toys for use in swimming pools, natural environments, including ponds, lakes, streams, etc. and for other recreational activities.

9. For an unknown period prior to July 5, 2011, defendant sold and/or distributed the aforementioned products through retail outlets within the Commonwealth of Pennsylvania.

10. On July 5, 2011, minor plaintiff, his brother and their two friends were playing in the swimming pool area of the home of James and Rhonda Brisbois ("homeowners"), 1413 Penny Lane, Gilbertsville, Montgomery County, PA with the homeowners' permission.

11. During their recreational use of the Brisbois swimming pool, minor plaintiff, his brother and the Brisboises' two sons were each in possession of and were squirting water guns and/or water cannons at one another.

12. At all material times, the Brisboises owned a Poolmaster Water Launcher which defendant had placed in the stream of commerce.

13. While standing near the shallow end of the Brisbois pool, the Brisboises' 13 year old son, twirled a Poolmaster Water Launcher over his head. Thereupon, the two tubular parts of the toy separated spontaneously.

14. The toy's larger tube was propelled towards minor plaintiff, striking him in the face close to his right eye and nose.

15. Prior to the incident, the minor plaintiff had ceased squirting his friends with his water gun.

16. As a direct and proximate result of the aforesaid incident, minor plaintiff sustained a severe laceration to the area between his eyes (closer to his right eye). The forehead and facial tissue at the site were lacerated through his skin to bone and required sutures to close.

COUNT I

Nicholas W. DiPietro, a minor, by his parents and nat. gdns.,
Edward D. DiPietro and Kathleen DiPietro and
Edward D. DiPietro and Kathleen DiPietro in their own
right v. Poolmaster, Inc.

NEGLIGENCE

17. Plaintiffs incorporate by reference herein paragraphs 1 through 16, above, as if fully set forth at length.

18. At all material times, the carelessness, negligence and/or recklessness of defendant, as more fully described below, were substantial factors in bringing about the aforesaid injuries to Nicholas W. DiPietro and the damages resulting therefrom.

19. Defendant's acts and/or omissions prior to the sale and distribution of the defective and unsafe water launcher consisted of the following:

(a) failure to properly, adequately and safely manufacture, fabricate, assemble and/or construct the Poolmaster Water Launcher so as to prevent its two major plastic tubular components from separating during use;

(b) failure to construct, fabricate, assemble and or manufacture the Poolmaster Water Launcher with necessary and adequate restraining devices, positive limit stops and/or other alternative preventative and restraining devices or mechanisms that would have prevented

the two tubular components from separating from one another during use and to thereby become dangerous projectiles;

(c) failure to construct, fabricate, assemble and/or manufacture the Poolmaster Water Launcher with the application of a sufficient amount of adhesive and/or bonding material at the joint between the inner plastic tube and the plunger that would have produced a full strength joint capable of preventing the two tubular components of the toy from separating from one another during use, and/or failure to have used a fail safe, effective and adequate type of adhesive or bonding material on the aforementioned joint;

(d) manufacturing, fabricating, assembling, constructing and/or distributing the Poolmaster Water Launcher with an inadequate, insufficient and unsafe amount of adhesive or bonding material, a deficiency that left it with only one-tenth of the strength of a properly made joint;

(e) failure to cover or coat the entire area of the overlap between the Poolmaster Water Launcher's plunger and the inner tube with sufficient adhesive and/or bonding material able to produce and ensure the strength in the joint necessary to make it safe for its intended use;

(f) failure to adequately and properly inspect the joint between the inner plastic tube and the plunger to determine if all surface areas between the plunger and the inner tube were covered adequately and with a sufficient amount of adhesive or bonding material necessary to cover the entire surfaces between the plunger and the inner tube to thereby provide the toy with the strength required to render it safe for use;

(g) failure to ensure that its quality control procedures before, during and/or after manufacture, assembly, distribution, etc. were adequate enough to have detected the

severely inadequate and deficient amount of adhesive and/or bonding material applied to the surfaces between the plunger and inner tube;

(h) failure to warn users of the defects in the Poolmaster Water Launcher which it knew or should have known rendered it defective and unreasonably unsafe for its intended use;

(i) failure to prevent the sale, distribution and/or transfer of the Poolmaster Water Launcher in its defective, unsafe and unreasonably dangerous condition.

20. All of the aforementioned acts and/or omissions were substantial factors that together and/or separately produced the minor plaintiff's injuries.

21. Plaintiffs pray for the cost of any and all reasonable and necessary medical care which minor plaintiff has received or will receive as a result of the negligence and carelessness of defendant.

22. As a direct and proximate result of the aforesaid laceration, minor plaintiff sustained a permanent, prominent and very disfiguring facial scar and for a period of time after being struck by the tubular part suffered from headaches.

23. Additionally, minor plaintiff has suffered an injury to his emotional and psychological well-being both as a result of his initial facial injuries and his resulting severe facial scar and permanent disfigurement.

24. As a direct and proximate result of the aforesaid incident, minor-plaintiff has been caused to endure substantial pain, suffering, anxiety, stress, embarrassment, severe cosmetic disfigurement and loss of life's pleasures and he will continue to do so in the future.

25. As a further direct and proximate result of the aforementioned incident, minor-plaintiff has been prevented and will be prevented for an indefinite time from pursuing his usual

and daily activities, all to his emotional detriment and loss and/or may suffer an impairment of his future earning capacity.

26. Plaintiffs assert that the amount claimed in this action exceeds the jurisdictional amount requiring arbitration under the Philadelphia County Rules of Civil Procedure.

WHEREFORE, plaintiffs, Nicholas W. DiPietro, a minor by and through his parents, Edward D. DiPietro and Kathleen DiPietro, and the adult plaintiffs in their own right, demand judgment in their favor and against defendant, Poolmaster, Inc., in an amount in excess of \$50,000 for compensatory damages together with interest, costs and attorney's fees.

COUNT II

Nicholas W. DiPietro, a minor, by his parents and nat. gdns.,
Edward D. DiPietro and Kathleen DiPietro, and Edward D.
DiPietro and Kathleen DiPietro in their own right v. Poolmaster, Inc.

STRICT LIABILITY

27. Plaintiffs incorporate by reference herein paragraphs 1 through 26, above, as if fully set forth at length.

28. At all material times, defendant's Poolmaster Water Launcher was defective and unreasonably dangerous to foreseeable users and consumers in one or more of the following ways:

- (a) The Poolmaster Water Launcher was defectively designed;
- (b) The Poolmaster Water Launcher was defectively manufactured, fabricated, assembled and/or constructed;
- (c) The Poolmaster Water Launcher was unsafe, defective and unreasonably dangerous to users, consumers, bystanders and the minor plaintiff.

29. The aforesaid defects in the Poolmaster Water Launcher were foreseeable to defendant.

30. The aforesaid defects in the Poolmaster Water Launcher existed from the time of its manufacture, assembly, fabrication, etc. and, therefore, the defects were present when it left the possession and control of defendant.

31. The aforesaid defects in the Poolmaster Water Launcher were substantial factors in bringing about the injury to minor plaintiff and the damages resulting therefrom as more fully averred above.

WHEREFORE, plaintiffs, Nicholas W. DiPietro, a minor by and through his parents, Edward D. DiPietro and Kathleen DiPietro, and the adult plaintiffs in their own right demand judgment in their favor and against defendant, Poolmaster, Inc., in an amount in excess of \$50,000 for compensatory damages together with interest, costs and attorney's fees.

COUNT III

**Nicholas W. DiPietro, a minor, by his parents and nat. gdns.,
Edward D. DiPietro and Kathleen DiPietro, and Edward D.
DiPietro and Kathleen DiPietro in their own right v. Poolmaster, Inc.**

BREACH OF WARRANTY

32. Plaintiffs incorporate by reference herein paragraphs 1 through 31, above, as if fully set forth at length.

33. The Poolmaster Water Launcher failed to function as intended and as represented by defendant in that its major, tubular components could separate during use, turning those parts into dangerous and potentially lethal projectiles.

34. The Poolmaster Water Launcher was not fit for the ordinary purposes for which it was intended and failed to conform to the implied representations and warranties of defendant that it was suitable, fit and safe for its intended uses.

35. At all material times, defendant has breached its express and implied warranties of merchantability and fitness for a particular purpose.

36. At all material times, plaintiffs were the intended third party beneficiaries of defendant's warranties.

37. The Poolmaster Water Launcher was not merchantable and fit for its ordinary uses and purposes because it could break during use, allowing its components to become dangerous projectiles that could inflict serious bodily injury or death.

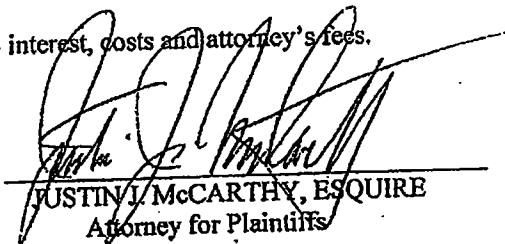
38. Plaintiffs reasonably relied on defendant's warranties that the Poolmaster Water Launcher was merchantable and fit for the ordinary purposes for which it was intended.

39. The Poolmaster Water Launcher was not fit for the purpose for which it was intended, that is, a toy to be used recreationally for squirting water in swimming pools and/or natural bodies of water used for recreational swimming and during other recreational activities.

40. Defendant's breach of warranties was a substantial factor in the minor plaintiff's permanent and severe bodily injuries, permanent and disfiguring scars and his mental, emotional and/or physical pain and suffering.


41. Defendant's breach of warranties has caused plaintiffs to incur the cost of all reasonable and necessary medical care which minor plaintiff has received or will receive as a result of his injuries.

WHEREFORE, plaintiffs, Nicholas W. DiPietro, a minor by and through his parents, Edward D. DiPietro and Kathleen DiPietro, and the adult plaintiffs in their own right demand judgment in their favor and against defendant, Poolmaster, Inc., in an amount in excess of \$50,000 for compensatory damages together with interest, costs and attorney's fees.


JUSTIN J. MCCARTHY, ESQUIRE
Attorney for Plaintiffs

VERIFICATION

I verify that I am plaintiff in the within action and that the averments made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


EDWARD D. DIPIETRO 1/13/13


KATHLEEN DIPIETRO 1/13/13

Dated: 1/13/13